

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

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XL SPECIALTY INSURANCE COMPANY, :
: Plaintiff, :
: v. : No. 08-CV-3821 (GEL)
: :
JOHN D. AGOGLIA, PHILLIP R. BENNETT, :
LEO R. BREITMAN, EDWIN L. COX, :
SUKHMEET DHILLON, THOMAS H. :
DITTMER, NATHAN GANTCHER, STEPHEN :
GRADY, TONE GRANT, THOMAS HACKL, :
DAVID V. HARKINS, SCOTT L. JAECKEL, :
DENNIS A. KLEJNA, THOMAS H. LEE, :
ERIC G. LIPOFF, SANTO C. MAGGIO, :
PETER McCARTHY, JOSEPH MURPHY, :
FRANK MUTTERER, RONALD L. O'KELLEY, :
RICHARD N. OUTRIDGE, SCOTT A. :
SCHOEN, WILLIAM M. SEXTON, GERALD :
SHERER, PHILIP SILVERMAN, AND :
ROBERT C. TROSTEN, :
: Defendants.
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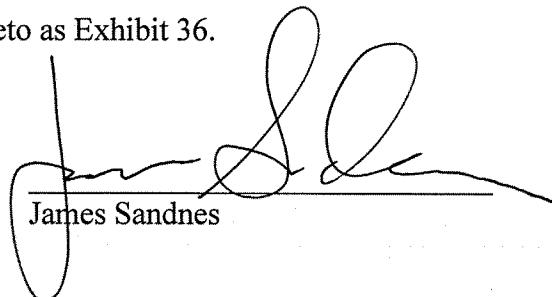
REPLY AFFIDAVIT OF JAMES SANDNES

State of New York)
: ss.
County of New York)

James Sandnes, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and the firm of Boundas, Skarzynski, Walsh & Black, LLC, counsel for XL Specialty Insurance Company ("XL") in this action for declaratory judgment. I make this affidavit to bring before the Court certain documents relevant to XL's motion for summary judgment.

2. On April 17, 2008, the former President of Refco Group Ltd. LLC, Tone Grant (“Grant”), was convicted, by a jury of this Court, of conspiracy, securities fraud, wire fraud, bank fraud and money laundering arising out of the same wrongdoing to which Phillip Bennett, Robert Trosten and Santo Maggio confessed. On August 7, 2008, Grant was sentenced to 10 years in prison in connection with his conviction. A true and correct copy of the relevant portion of the sentencing transcript is annexed hereto as Exhibit 36.



James Sandnes

Sworn to before me this 15th
day of August, 2008

Notary Public

ARI R. MAGEDOFF
Notary Public, State of New York
No. 02MA6150477
Qualified in New York County
Commission Expires July 31, 2010

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA
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4 v. 05 Cr. 1192 (NRB)
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5 TONE N. GRANT, Sentence
5 Defendant.
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7 -----x
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8 New York, N.Y.
8 August 7, 2008
9 11:00 a.m.

9 Before:

10 HON. NAOMI REICE BUCHWALD District Judge
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12

13 APPEARANCES
14
15 MICHAEL J. GARCIA
15 United States Attorney for the
16 Southern District of New York
16 CHRISTOPHER L. GARCIA
17 NEIL M. BAROFSKY
17 Assistant United States Attorneys
18
19 ROGER ZUCKERMAN, ESQ.
19 AITAN GOELMAN, ESQ.
20 NORMAN ELSEN, ESQ.
20 Attorneys for Defendant
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0 887rgras Sentence
1 (Case called)
2 THE CLERK: Is the government ready to proceed?
3 MR. GARCIA: Yes. Good morning, your Honor. On
4 behalf of the government, Christopher Garcia and Neil Barofsky.
5 Sitting with us at counsel table is Mary Beth Allen, our
6 paralegal.
7 THE CLERK: Is the defense ready to proceed?
8 MR. ZUCKERMAN: Good morning, your Honor. We are.
9 I'm Roger Zuckerman. I'm accompanied by my partner Aitan
10 Goelman, by Benjamin Block, and my partner Norman Elsen. And
11 of course Mr. Grant is here. We're ready to proceed.

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The second is that within three weeks of Mr. Bennett's arrest, Mr. Grant transferred the house to his wife, from whom he had been separated many years, and transferred an apartment to a long-time friend. These are not the acts of a guilt-free mind.

We have now discussed many of the important matters which weigh on the negative side of the ledger. There is no question but that Mr. Grant has many traits and accomplishments that weigh on the positive side of the ledger. These include his military service, his founding and continued support of the Music City Track Club, his other charitable contributions, and his contributions to his college, Yale, his law school, Vanderbilt, and the Marine Corps, among others, and his financial and emotional support of his wife, stepchildren, and stepgrandchildren.

16 But as we credit Mr. Grant for his life's work, we
17 must also consider the opportunities he had and the training
18 and knowledge those opportunities gave him. That education and
19 his work experience taught him that what he did violated the
20 law. Nevertheless, he made the moral choice over and over
21 again to join with Bennett, not to extricate himself from the
22 fraud, and to profit from the activities which he had to know
23 were legally, ethically, and morally wrong. Regardless of
24 whether he chose to blow the whistle or to come clean, he
25 always had the chance to walk away.

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Sentence

I sentence you, Mr. Grant, with a view that Mr. Bennett was more culpable but not as disproportionately so as your lawyers would suggest given your irreplaceable role in this fraud. I also sentence you with the hope that this sentence will deter others who might think that it is excusable to not get their hands as dirty but nevertheless profit enormously from the dirty work of others.

Accordingly, having considered all the sentencing submissions and, as I said earlier, having read every letter submitted on Mr. Grant's behalf, I sentence Mr. Grant to a total of 10 years in custody. That breaks down as 5 years on Count One and 10 years each on Counts Two, Three, Four, and Five, all to run concurrently.

There is, further, a period of supervised release of 3 years on all counts, to run concurrently. In light of the forfeiture, there is no fine. I assume that any restitution order will be deferred. And there is a special assessment of \$500.

I welcome any requests with respect to a place of confinement.

20 CONTINUED:
21 MR. ZUCKERMAN: I'm sorry?

THE COURT: I said I welcome any suggestions that you have with respect to a place of confinement.

24 MR. ZUCKERMAN: I have none today, your Honor. I
25 would ask if the Court would permit a self-surrender of the

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1 887rgras
defendant.

Sentence

THE COURT: I don't have any problem with that. By the way, something I don't know, what are Mr. Grant's bail conditions?

5 MR. ZUCKERMAN: He is on a \$10 million bond co-signed
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